

Message Text

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SUBJ: BURROUGHS' PROTEST ON NICS TARE CONTRACT AWARD

REF: A. STATE 235783

B. LETTER LOVELAND TO MILLER 14 MAR 75 (COPIES TO
REHFELD AND COMMERCE)

SUMMARY: THIS MESSAGE PROVIDES OUR CONTRIBUTION TO DEPT OF
COMMERCE REPLY TO BURROUGHS CORP REGARDING SUBJECT PROTEST.
END SUMMARY.

1. MISSION PERSONNEL HAVE DISCUSSED WITH NICSMA THE RELATIVELY
CURT NICSMA RESPONSE GIVEN TO BURROUGHS' LETTER OF PROTEST
CONCERNING THE TARE BIDS. WHILE NICSMA RECOGNIZES THAT
BURROUGHS' EXPENDITURE IN PREPARATION OF THE PROPOSAL DESERVES
A MORE DETAILED RESPONSE, THEY ARE PRECLUDED FROM A BILATERAL
DISCUSSION OF THE DETAILS UNTIL A FINAL DECISION HAS BEEN MADE
CONCERNING AWARD OF THE CONTRACT TO LITTON. AWARD IS CURRENTLY
HELD UP BY OFFICIAL DISPUTE BY THE NETHERLANDS ON BEHALF OF
PHILIPS. AT MEETING OF PAYMENTS & PROGRESS COMMITTEE (P&P) ON
9 OCT 75, VOTE AGAINST PHILIPS' CASE WAS ELEVEN TO ONE. IF
NETHERLANDS DOES NOT NOW DESIST, MATTER WILL GO TO DPC BEFORE
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REFERRAL TO PANEL OF ARBITRATORS. GENERAL OPINION IS THAT
NETHERLANDS AUTHORITIES HAVE RECOGNIZED THAT PHILIPS'
POSITION IS UNTENABLE AND WILL WITHDRAW RATHER THAN DISCUSS
MATTER AT PERMREP LEVEL.

2. FAILING RESPONSE BY NICSMA, MISSION ANSWERS TO QUESTIONS
IN REF A FOLLOW:

A. NICSMA PERSONNEL BELIEVE THAT DIALOGUE AT BIDDERS' CONFERENCE IN DEC 74 AND LATER CLARIFICATIONS RELIEVED THE STRICT LIMITATION TO 12 AIR CHANGES PER HOUR. IN ANY CASE, THEY HAVE ACCEPTED THE SOLUTIONS PROPOSED BY ALL 3 BIDDERS AND AIR CONDITIONING SHOULD NOT BE AN ISSUE.

B. MISSION'S EFFORTS TO SOFTEN NICSMA GENERAL TERMS AND CONDITIONS ARE DETAILED IN REF B. IN PARTICULAR, NICSMA'S ANSWERS TO QUESTIONS CONCERNING ACCESS-TO-CONTRACTORS' BOOKS AND RECORDS (PARA (C) TO ANNEX TO NICSMA/HB(75)1, ENCLOSED WITH REF B) WERE DISCUSSED WITH ALL US BIDDERS. THERE WAS NO INDICATION OF DISSATISFACTION ON THE PART OF BURROUGHS UNTIL AFTER THE NON-RESPONSIVE BID HAD BEEN SUBMITTED TO NICSMA.

C. NICSMA'S INSISTANCE ON NO SERVICE ACTION BEING ALLOWED FOR INCOMING MESSAGES HAS BEEN MAINTAINED. NICSMA PERSONNEL HAVE ASSURED US THAT LITTON'S BID IS COMPLIANT IN THIS AND ALL OTHER ASPECTS. WE HAVE NO REASON TO BELIEVE OTHERWISE AND NO BASIS ON WHICH TO CHALLENGE NICSMA'S ASSURANCE.

D. NICSMA'S SPECIFICATIONS FOR THE TARE CONTRACT, WHILE SOMEWHAT LESS COMPLETE THAN US SPECIFICATIONS AS TO STANDARD DEFINITION OF CONTRACT DATA, ARE NORMAL FOR NATO CONTRACTS. ANY COMPLAINT THAT THE SPECIFICATIONS WERE DEFICIENT IN THAT AREA WOULD HAVE HAD TO BE SUBMITTED BEFORE THE CLOSING DATE OF THE BIDS IN ORDER TO HAVE BEEN CONSIDERED IN BID EVALUATION.

3. WE ARE PERPLEXED BY STATEMENT IN PARA 2, REF A, THAT PAOLI GROUP IS UNDER PRESSURE TO EXPLAIN WHY BURROUGHS DID NOT WIN. IN EFFECT, MR. PAFORD, PAOLI MARKETING MANAGER, FLEW TO BRUSSELS ON THE DAY OF BID CLOSING TO APOLOGIZE TO MISSION PERSONNEL FOR NOT HAVING BEEN ALLOWED TO FOLLOW OUR ADVICE THAT "YOU MUST SUBMIT A THOROUGHLY RESPONSIVE BID OR YOU WILL BE DECLARED NON-COMPLIANT". HE SAID THAT A LAST MINUTE DECISION FROM THE CORPORATE OFFICE IN DETROIT HAD PREVENTED HIM FROM DOING SO AND HAD REQUIRED THAT THE COVER LETTER STATE THAT BURROUGHS COULD NOT ABIDE BY NICSMA'S ADMINISTRATIVE
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